

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 633 of 2000

Between:

Zakia Khatoon W/o.Dilawar Ali Khan
R/o.16-4-669, Chanchalguda,
Hyderabad. Rep GPA Holder, Dilawar Ali Khan S/o Himmat Khan

..... PETITIONER

AND

- 1 The Special Court under A.P Land Grabbing Prohibition Act
through its Registrar, at B.R.K.R Bhavan Hyderabad
- 2 The Tribunal Constituted under A.P.Land Grabbing prohibition Act
Chief Judge City Civil Court, Hyderabad
- 3 Shahzadi Banu W/o.Iqbal Pasha
R/o. 16-4-663 Chanchalguda, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate writ of writ, order or direction, to call for the records pertaining to judgment and decree dt.18-9-98 in O P No.1374 of 1991 on the file of the 2nd Respondent and the judgment and decree dt.21-9-99 passed on LGA No.. 3/99 on the file of the first respondent, quash the same, as illegal, arbitrary and without jurisdiction, by dismissing the said O P No.1374/91 on the file of the 2nd Respondent; Award Costs and pass such order or further orders, as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.RAGHUVeer REDDY

Counsel for the Respondent Nos.1 and 2: GP FOR REVENUE

Counsel for the Respondent No.3: MR.P.VENUGOPAL

The Court made the following:

ORDER: (Per Hon'ble Sri Justice K.C.BHANU)

This Writ Petition is filed by the petitioner seeking to challenge the judgment and decree, dated 18.09.1998, made in O.P. No.1374 of 1991, on the file of the Special Tribunal constituted under the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act'), City Civil Court, Hyderabad, as confirmed in L.G.A. No.3 of 1999, dated 21.09.1999 by the Special Court constituted under the Act, as illegal and arbitrary and to quash the same.

The brief facts that are necessary for disposal of the present writ petition may be delineated as follows:

The third respondent, claiming to be the owner and possessor of the House bearing No.16-4-663 admeasuring 105 square yards situated at Chanchalguda, Hyderabad, having purchased the same from the writ petitioner under Ex.A.1 sale deed, dated 28.11.1998, filed a petition under Section 7-A of the Act, before the Special Tribunal alleging that the petition schedule property i.e. the open space admeasuring 5 feet 6 inches in width and 22 feet in length, having a staircase therein situated on the Northern side of the said house, was grabbed by the writ petitioner.

The writ petitioner filed counter affidavit in the said O.P. stating that the open space, which is in her occupation, has not been sold by her to the third respondent, as the same was not shown in the registered sale deed. Therefore, the third respondent has no right to claim the open space on the Northern side of her house, as it is owned and possessed by the writ petitioner.

Before the Special Court, P.Ws.1 to 3 were examined and Exs.A-1 to A-3 were marked on behalf of the petitioner, who is third respondent herein. On behalf of the respondent-writ petitioner, no oral evidence was adduced, but Exs.B-1 to B-6 documents were marked.

The Special Tribunal constituted under the Act, upon elaborate appreciation of the evidence available on record and also on physical inspection made by it, came to the conclusion that the respondent-writ petitioner is a land grabber, and therefore, ordered her to vacate the petition schedule property within a period of one month. Aggrieved by the same, the writ petitioner-respondent filed L.G.A.No.3 of 1999 before the Special Court. The Special Court, upon re-appreciation of the evidence available on record, confirmed the order of the Special Tribunal. Challenging the same, the present writ petition is filed.

In this writ petition, the learned counsel appearing for the writ petitioner-respondent contended that the Tribunal is not competent to conduct any physical inspection in respect of the disputed site in question, and that the writ petitioner sold only an extent of 105 square yards of site along with the house therein under Ex.A.1 and the open space on the northern side of the house does not form part of Ex.A.1 transaction, and therefore, she cannot be characterized as land grabber and hence, he prays to quash the Judgment under challenge.

On the other hand, the learned counsel for the third respondent contended that the open space situated on the northern side of the house purchased by the third respondent forms part of the transaction covered under Ex.A.1 sale deed and therefore, the judgment under challenge does not suffer

from any incurable legal infirmity so as to call for interference by this Court. Hence, he prays to dismiss the writ petition.

While exercising the powers of *Certiorari* Jurisdiction, this Court can interfere with the order of the Tribunal or the Court, when the Tribunal or the Court without considering the evidence available on record, gives an incorrect finding, or when there is a wrong application of provision of law, or when the relevant evidence has not been considered by the Court concerned, and except that this Court cannot go beyond that so as to re-appreciate the evidence adduced by the parties.

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The only point that has been raised by the learned counsel for the writ petitioner is that the Special Tribunal has no jurisdiction to make physical inspection of the disputed site, and therefore, the Tribunal committed a serious infirmity and came to the wrong conclusion in determining the rights of the parties. To find out whether the Tribunal gave a correct finding basing on the evidence available on record or not, a few relevant facts may be noted as follows:

The execution of Ex.A-1 sale deed is admitted and the correctness of Ex.A.2 plan attached to Ex.A-1 is also not in dispute. The extent sold under Ex.A-1 is noted as 105 square yards. So, what is sold under Ex.A-1 is clearly indicated in the plan Ex.A-2 attached to Ex.A.1. The length of the property facing the road including the open site is mentioned as 43 feet in the notes inspection and the same is tallying with the measurements of the site as noted in Ex.A.1. The findings cannot be shown to be perverse or contrary to the appreciation of evidence, and they are based upon proper appreciation of evidence available on record. Upon perusing the material on record and also judgments of the Courts below, we find that the findings are based on appreciation of evidence on record. There are actually no grounds to interfere with the findings given by the Courts below. We find no merit in the writ petition.

Accordingly, the writ petition shall stand dismissed without any order as to costs. However, as the learned counsel for the writ petitioner prays to grant

reasonable time for vacating the petition schedule property, and in view of the fact that for all these years the petition schedule property has been enjoyed by the writ petitioner, we consider it appropriate to grant three months time to the writ petitioner to vacate the petition schedule property.

B. SUDERSHAN REDDY, J

Date: 03-11-2004

K.C. BHANU, J

KLP/GRR

To

- 1 The Special Court under A.P Land Grabbing Prohibition Act
through its Registrar, at B.R.K.R Bhavan Hyderabad
- 2 The Tribunal Constituted under A.P.Land Grabbing prohibition Act
Chief Judge City Civil Court, Hyderabad
3. 2 CCs to G.P. for Revenue, High Court buildings, Hyderabad.(OUT).
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